Role of Medical Evidence in certain offences against women

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1. **Title of the Research:**

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2. **Introduction :**

In a criminal trial, in order to zero down on the relevant facts, the judge has to rely on the knowledge and opinion of certain experts as he may not be in a position to appreciate the technical details involved in a particular case. Evidence is given by the expert of the relevant field in the form of his opinion which is based on the information that he has gathered from the facts of the case. This evidence supplements the assertions of the judge and, together, they complement each other and combine to from the basis of the judgment. However, the evidentiary value of the opinion given by the expert is not unshakeable because of the discretionary power available to the Court, which may choose to accept or reject it. This discretionary power in the hands of the Court arises from Section 45 of the Indian Evidence Act, 1872, which, theoretically, gives a lesser degree of importance to expert evidence by terming it as merely corroborative in nature.

S.45 of Indian Evidence Act, 1892, states as –

"When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identify of handwriting or finger impressions, the opinions upon that point of persons especially skilled in such foreign law, science or art, or in questions as to identify of handwriting or finger impressions, are relevant facts."

Such persons are called experts.

The careful reading of the section gives us a vague idea about who is an expert, by the words – the persons especially skilled. There is no clear mention about qualifications, experience or any particular attainment. But especially skilled means there must be something to show that the expert is skilled and has an adequate knowledge of the subject.

Who is an expert? -

Expert – A person instructed by experience is called 'expert'.

Witnesses ordinarily are to testify the facts in their direct knowledge leaving it to the judge to form opinions, inferences or conclusions on the basis of such facts.

Witnesses are ordinarily not to say what they thought or believed to be and therefore their opinions are irrelevant in a judicial enquiry, but in certain special matters requiring special skill in the subject concerned, opinions of persons having special study, training or experience are accepted as evidence.

Expert evidence in a criminal trial would be just a fraction of the totality of the evidence on the appreciation of which the judge takes decision. The Court takes into account all the other evidence at hand along with the opinion of the scientific expert, which is just one piece of evidence required to be taken into consideration and appreciated for its evidentiary value.

An expert witness is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the judge to form his independent judgment by the application of such criteria to the facts proved by the evidence of the case.

Importance of Medical Evidence –

Medical knowledge is a specialized form of knowledge. A layman may not be in a position to have medical knowledge without proper education and training. The knowledge of the medical expert is always essential in the criminal justice system. The expert evidence given by a medical person comes to the help of the Court in deciding various matters. Particularly, in case of death of a person, medical evidence is inevitable. Such evidence can be obtained through post-mortem report. The importance of the post-mortem report is as a tool in the hands of the prosecution. It becomes useful to decide the guilt of the accused.

The inter-action between Medicine and the Law has played the main role in the recent years. Medical science gives clue as to how the death of the person, how the injury, was caused, while the law prosecutes a person for killing and injuring other. The postmortem report, examination of wounds, chemical analysis, the expert reports are admissible in the Court as an evidence according to our legal system. The three main statutes, the Criminal Procedure Code 1973, the Indian Penal Code (Act 45 of 1860), and Indian Evidence Act 1872, regulate our legal system in the area of criminal justice and Criminal Jurisprudence.

The importance of Medical Evidence at present is an increasing tendency. The medical evidence includes doctor's report of examination, chemical analysis report, serologist, DNA (Dioxy-ribo-Neuclic Acid test)

In a trial where injury or death is involved, or for an offence of causing hurt to a human body, the opinion of medical man is sought for ascertaining the cause of death or injury or to determine as to the injuries are anti-mortem or post-mortem, probable weapon used, the effect of injuries, medicines, poisons, the effect and consequence of wound whether they are sufficient to cause death in the ordinary course, the duration of injuries and the probable time of death. In the same way while the offence or trial of kidnapping and rape the medical opinion is adduced to establish the fact that the girl is minor, whether rape was committed under influence of liquor, medicine or intoxicant, threat by using weapon, to extent injury on private part of prosecutrix and that of accused, or if death is caused by excessive force used by the accused to the minor child etc.[1]

[1] Medical Jurispudences : HWV cox & Jhala and Raju : Eev Act S. 45.

Gibson J. cited VII Wigmore p.12 and Cross, Evidence, 329 (1958) that "It is a general rule that a witness is not to give his impressions, but to state the facts from which he received them and leave the judge to draw his own conclusions. But wherever the facts from which a witness received an impression are too evanescent in their nature to be recollected or are too complicated to be separately and distinctly narrated, his impressions from these facts become evidence."[2]

Ordinarily medical evidence is corroborative evidence. Expert evidence alone will not convince the Court beyond reasonable doubt that a particular person is guilty of a crime. Where the medical evidence describes the injuries and the same corroborated, the former can be relied upon –

This was clearly summed up by Justice Monir (as he then was) in his principles and Digest of the Law of Evidence where he states that 'when a medical person is called as an expert, he is not to witness the facts, because his evidence is not direct evidence of how an injury in question was done. He gives his opinion only on how that, in all probability was caused. The value of such evidence lies only to the extent it supports and lends weight to direct evidence of eye-witnesses or contradicts evidence and removes the possibility of the injury in question and could take the manner alleged by the witness.'

Although the substantive evidence case is that of the eyewitnesses who seen the incident, expert evidence has corroborative value. The medical evidence used to discredit the witness account and to show that they could not possibly have been caused in the manner alleged by the prosecution.

With the help of decided cases, the role of medical evidence, especially in cases of grave offences against women is proved to be inevitable. The opinion of the doctors based on their knowledge as of at most importance in proving the case of the prosecution. But, if the provisions of the Evidence Act are taken into consideration, medical evidence is not direct evidence.

It becomes necessary in each and every case where the expert evidence is admitted to check and counter-check it by producing the expert witness before the court. Without examining the expert witness, his evidence may become inadmissible.'[3]

The Rule of accepting expert evidence –

Expert evidence is regarded as opinion evidence. Sometimes it may happen that such an opinion points out total improbability of a certain event and at the same time direct evidence is showing that the event actually happened. Now, as per the general rule, direct evidence is always admissible this rule will not be made applicable Direct evidence may be discarded on the basis of opinion evidence. Where the direct evidence is doubtful and it is improbable because of the expert evidence then also the Court may not accept the both.

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[2] Dr. Avtar Singh, Principles of the law of Evidence, 18th Ed. 2010, Central Law Publications, Allahabad.

[3] Hanishi K. Thanawalla (1996) , "Development and Liberalisation of Hearsay doctrine", Journal of the Indian Law Institute, Vol 38.1

It means that the expert evidence though valuable, though scientifically proved to be correct, it always should go hand in hand with other type of evidence.

How far the judicial precedence prove the importance of medical evidence? –

Practically, the Court have always accorded due importance to expert evidence and there are a plethora of judgments to substantiate this point. In cases of grave offences committed against women, such as rape, murder and dowry burning, the role of medical evidence becomes crucial. Medical evidence may be able to ascertain the cause of death but it is not possible to pinpoint with precision, the exact means by which the cause of death was set into motion. The above discussion highlights the indispensability of medical evidence in criminal trials involving grave offences committed against women.

The role of a medical man, in law, is to help in the administration of justice. It is natural that in the course of his professional duties, he frequently enters the arena of law, in examination of cases for age, the examination of injuries on the body of a person rape, sodomy etc. He has to examine cases of poisoning, as also to observe and certify persons regarding their sanity or insanity.[4]

How the medical evidence is regarded as corroborative evidence? - Expert evidence is always regarded as only corroborative evidence. Direct evidence has to be taken into consideration as a primary proof of evidence. Especially, whenever oral evidence is give, medical evidence should support it. But when there are inconsistencies in the oral and medical evidence the whole case set by the prosecution becomes suspicious, and then the conviction of the accused becomes unsafe.

As direct evidence is inevitable to prove the offence beyond reasonable doubt, opinion evidence gets secondary importance. Both direct evidence and opinion evidence should go together, coordinate with each other, then only the care of the prosecution becomes stronger and the possibility of the conviction of the accused is increased.

The medical evidence is always regarded as opinion evidence and has its importance as expert evidence. But, one can not deny the value of direct evidence. Direct evidence is undoubted and accordingly the medical evidence is corroborative evidence. It should not go against the direct evidence. It does not mean that when there is a contradiction between direct evidence, e.g. evidence by an eye witness and medical evidence, the authenticity of medical evidence is questioned. The value of medical evidence is accepted as evidence by an expert,

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[4] Dr. P.K. Bhattacharji (1998), 'Medico-Legal Companion' , 2nd Ed., Allahabad Law House, p.276.

but the prosecution case when weakened; the Court may not be able to convict the accused.

The researcher is interested to solve certain questions through his research and wants to relate his research work on the following points. Till now, the courts are able to cope up with the task of evaluation of expert evidence. In accepting the expert evidence, the judge requires application of mind and appreciation of the opinion of expert. The expert evidence as it is not binding on the Court. It means, the judge may accept it or may reject it.

Now, the scientific evidence, being perfect one should not create any problem for the Courts, as to admit the evidence or not. The question of admissibility of evidence will not come before the Court. At the same time there is no need for the evaluation of the intelligible expert scientific evidence. Now, the courts will show their readiness to learn the nature of the scientific evidence. As in case of DNA evidence, the claim is of 99.9 % accuracy, the Court will not be reluctant to accept such evidence. It means the opinion of the expert giving scientific evidence is as if mandatory on the Court to admit. The Court should be cautions in applying the expert evidence by determining the factors, as expertise of the expert, his qualifications, experience etc. At the same time, the Court should see in which circumstances the expert scientific evidence should be allowed when the issue before the Court is of such a nature that may not be any need to take scientific evidence, the court may not allow such evidence.

Though the scientific evidence plays an important role in the courts, the Courts also can demand better scientific evidence with improved methods for proper interpretation of results. It is the duty of the court to examine the contents of the report. While presenting the evidence the court and the lawyers can make a search through questions to the experts. The courts can encourage the expert and can recognize and suggest new methods of providing evidence in the Court of Law.

In the last decade, for the sake of giving special protection to women many laws are passed and changes and amendments are made in the legislation. In Indian Penal Code and in Criminal Procedure Code, certain section such as S.304 A, S.498 A are added. However, the provisions of the Evidence Act have not been amended. In cases of grave offences against women, the woman is in helpless position because of her physical incapability. When the rape is committed against a woman, the availability of direct evidence is zero, most of the times. As such in cases of murder of the wife more particularly, again the offence is committed in the four walls of the house. In such cases, the medical evidence plays a crucial role; in the absence of direct evidence. The vulnerability of the woman extends to such a level that her caretaker can take benefit of his position and she has to fall pray to his violence. Though the prosecution files the case with enthusiasm to convict the accused during the investigation trials because of lack of direct evidence, the prosecution case becomes weak.

The legislature could not anticipate tremendous development of modern science. DNA technology can revolutionize the criminal justice system. The code

of criminal procedure (Amendment) Act 2005 incorporated new sections. S.53 A & S. 164 A relating to collection of DNA samples. S. 53 A authorizes the investigating officer to collect DNA samples with the help of medical practitioners from the person accused of a rape case. S. 164 – A authorizes the investigating agency to collect DNA samples from the victim of rape with the consent of such woman. However, these provisions are not enough to meet the challenges before the court. There is a need to enact a special law relating to DNA technology.

There is a possibility of having a conflict between right to privacy and DNA testing, however it can be minimized by legislating proper laws, taking into consideration the examples of other developed countries.

The Government of India is a signatory to Universal Declaration on the Human Genome and Human Rights 1997 and the Indian Parliament is duty bound to make appropriate legislation and necessary amendments for the purpose of controlling the accessibility, standard, quality and confidentiality of the genetic DNA information in administration of justice of our country.[5]

In the Law Commission 185th Report – It is mentioned that there is a need to insert the words in S.45 of Indian Evidence Act as 'identify of persons or animals'. DNA may be more useful for purposes of investigation.

In one of the article, the questions were raised to J. P. K. Batri, Former Judge, Delhi High Court, answered the question – that the Commission observed that there is no need to provide a specific mention to include 'DNA' evidence under the Act – What is your opinion about? He stated that the amendment is definitely awaited. The legislative has to intervene in this regard to say that DNA should be taken as evidence. I think, DNA test should be included in the Evidence Act as a vital amendment.[6]

3. Objectives of the Research :

In this research, the main objective is to analysis the role of medical evidence in Criminal Justice System in India. For this purpose, the researcher has an objective to analyze the role of the evidence given by a medical expert while dealing with the prosecution case. The medical evidence is regarded as opinion evidence plays an important and indispensable part of the evidence, particularly in cases of offences committed against women. A special reference can be given to rape cases, murder cases and dowry death cases. The researcher is intending to take help from the judgments of the Supreme Court of India and various High Courts in India in context of offences committed against women. Ultimately, the

5 An article by Dr. Jyotirmony Adhikary, Legislation on DNA Evidence– A proposal 2008 2 SCC J 24

6 Lex Witness, Vol.2, Issue 7, Feb.2011, pg.no.14, Reviewing the Indian Evidence Act, 1872.

researcher is intending to give the suggestions to give more importance to medical evidence than it is accorded under the present Act.

a. To understand the value of evidence given by the medical expert.

b. To mention the importance of the evidence of medical expert in Criminal system in India particularly in cases of offences committed against women.

c. To know the attitude of different High Courts of India, about evidence given by medical expert through various judicial decisions.

d. To suggest changes to enhance the evidentiary value of medical expert.

e. To understand the role of medical evidence particularly in cases of offences against women.

f. To understand the uses and impacts of medical evidence in cases like rape and dowry deaths, and to observe whether there is any possibility of increase the importance of medical evidence in such cases.

4. Methodology :

With the advent of science in every field there is a necessity to examine the expert knowledge in witnessing. For this research the method primarily used is doctrinal method.

Print material is the primary form of instructional material. There are 2 types of materials that have to be reviewed.

1) the literature concerning the concepts & theories
2) empirical literature consisting of studies made earlier.

5. Nature of Information Needed :

It was necessary to identify the topic and the field in which research has to be made after having a general idea about the field. The field work started i.e. data collection. Here, the data collection is necessarily secondary data which is collected from the library particularly and from the computers. The books collected and literature reviewed gives a better idea of the topic and the scope of the research.

This research is a type of descriptive research; because the researcher wants to describe the situation in detail, with the help of different statutes and judicial decisions. This research adds to our knowledge but it doesn't stop there, it continues in the form of explanatory research.

The main source of data is secondary source of data. This research is primarily a doctrinal research. The sources of secondary data are books, journals, reports and websites. The secondary data provoked thinking of the researcher and helped him to develop appropriate procedure.

6. Type of Approach :

Science, research and scientific methodology are the pillars of our society. Research in the field of social sciences is different from the research in the field of natural sciences. There are 3 approaches to research.

1) Positivist approach
2) Interpretative approach
3) Critical approach

Here, the researcher wants to follow all these approaches in doing his research. The researcher states the statutory provisions as they stand, tries to interpret them and ultimately wants to criticize the statutory provisions and gives certain suggestions, such as amendments in the existing legislation or enactment of new laws, because the social, cultural and other factors have their impact on the judicial decisions. Society changes constantly because of the conflicts and contradictions which are rooted in the society.

7. Significance of Research Topic :

The law is always developing to deal with new fields of expertise. In the field of medical science and technical field, there are fast developments in last few years. Taking into consideration these developments the laws should be well equipped with the use of scientific knowledge. When generally one speaks about expert testimony, it is in the form of opinion. The accuracy of knowledge in the new scientific era may make it mandatory for the courts to accept the opinions as conclusions.

There can be different types of cases where expert's evidence is admissible. One in which the court has to depend on the existence of facts which are not known to the common person or which are not a part of common knowledge and hence it becomes necessary to take the help of those, whose knowledge, experience or study enables them to speak with authority. In some of the cases it becomes necessary to draw the conclusions from the stated facts, which totally depend on scientific or professional knowledge and which is not possible to draw by ordinary intelligence.

In some of the cases, the facts are to be stated by the experts and the conclusion is to be drawn by the judge, in other type of cases, the expert states the

facts, draws the conclusion, in the form of opinion and the opinion may be accepted or rejected by the court.

8. Research Problem :

The evidence presented before the Court has its own value. The technological advancements and changes in the scientific field and the social structure have to be taken into consideration by the legislature. This research tries to provide information to understand the precise nature of the problem in Criminal Justice System and to plan a response to it.

The research problem is –

What is the role of medical evidence in the Criminal Justice System in India?

How far the judicial precedence proves the importance of medical evidence?

How the medical evidence is regarded as corroborative evidence?

In the cases of offences against women, more particularly rape, murder or dowry deaths, whether it is possible to accord due importance to medical evidence, to regard it as absolute piece of evidence, in the light of Scientific advancements?

9. Scope of the Research :

The researcher wants to mention that this research is not a comprehensive one. For the sake of understanding the role of medical expert witnessing, the comparative study of different countries is necessary. But due to the constraint of literature and limitations of the researcher to collect such literature, this research is not able to give a comparative approach.

Expert evidence is inevitable in criminal cases and accordingly the Government has established laboratories in the country and other institutions in the country are offering scientific service in the administration of criminal justice, but due to the time constraint & fear of broadening the scope of the research, the researcher has put the limitations on the research.

10. Motivation for the Researcher :

The researcher has always an interest in criminal justice system and specifically in women related issues. In the course of time, the researcher is motivated by the provisions of Indian Evidence Act. In the prosecution case the prosecution submits the evidences to prove the crime of the accused and the judge gives the judgment accordingly. In between these two processes one important thread is connected and that is the expert evidence. Evidence presented in the Court by the experts such as medical expert must be of great importance. It is based on scientific knowledge which may not be easily accessible or available to the persons having no technical knowledge, including the judges and so the opinion of the medical expert is always have an evidentiary value.

11. Contribution of the Researcher :

The researcher wants to make a contribution to the criminal justice system, because the medical expert's evidence is regarded as opinion evidence, giving least importance to it, but the researcher's suggestions will give value to the evidence of the medical expert, more particularly in certain offences as rape and dowry death.

12. Literature Review :

1. Edward Phillips, Brief case on Law of Evidence Ist 1996, Cavendish Publishing Limited, London.

   This book is a summary of the most essential cases, in Law of Evidence. This book is not a text book, but useful for the Law students to read with the text book. The book contains the cases in Great Britain particularly. They are useful for the researcher because the Indian Law of Evidence is much similar to English Law. The Evidence Law in England has undergone legislative reforms in the course of time and Civil Evidence Act of 1995 was passed. The note of the changes are a part of this book.

   Indian Evidence Act 1872 has not undergone any changes in all these years. The reflections of the changes in the cases mentioned in the book is an inspiration to the researcher.

   This book is invaluable concise guide on the complex subject and interesting and highly relevant.

2. Vepa P. Sarathi, Law of Evidence, 6th Ed. 2006, Eartern book company, Lucknow.

   The author has his original approach to the subject of evidence and the clarity in the exposition of the principles.

The author took a reference from English and Indian decisions and extracts from the Judgments are set out to illustrate the principles of the subject.

The author wrote this book with the intention to solve the difficulties of the students on this subject, being a law teacher and ultimately expressed his own opinions on the subject.

The best part of the book is that it is not section by section, commentary method, but the author explained the scope of the rule in the language of the Judges of the Supreme Court of India, or of Privy Council.

The comprehensive and legal terminology has been discussed in a simple and lucid manner. The author's contributions will lead a path for my research work.

3. Dr. Avtar Singh, Principles of the Law of Evidence, 18th Ed. 2010, Central Law Publications, Allahabad.

This book is an introduction and study of the principles of Law of Evidence. The author in this book admires the success of the Act for more than a century. Still some provision may be redundant and so to be removed or some suggestions to provide some new material in the act, to be introduced according to the author.

The author has put down all current updates in his book which is helpful for the research.

4. R.V.Kelkar, Lectures on Criminal Procedure, 4th Ed. 2006, Eastern Book Company, Lukhnow.

This book is the section wise commentaries supported by relevant case law. The author has arranged lectures topic wise and in their logical order, a feature rarely found amongst the commentaries on the Code of Criminal Procedure. He has included under each topic all the connected provisions and explained the matter in a precise and easily understandable way.

The researcher feels that this book will develop proper perspective on the various provisions of the Code of Criminal Procedure. The efforts have been made to focus attention on the basic principles of criminal procedure and also on the interaction of the different statutory provisions through which these principles operate in practice.

5. K.D.Gaur, Criminal Law : Cases and Materials, 6th Ed. , Lexis Nexis , Butterworths, Wadhwa, Nagpur.

This book is an exercise to project the legal principles applicable to a given set of facts. This book teaches us the legal principles through case. This book is an excellent commentary on the Indian Penal Code. This

book includes recent landmark judgments on criminal law of various countries.

For the researcher, this book gives a separate chapter on Crime against women.

6. Ish Kumar Magoo, An Eagle Eye on Dowry Demand Cruelty & Dowry Death, 1st Ed. 2004, Capital Law House, Delhi

7. Pillai PSA, Criminal Law, 10th Ed. 2008, Lexis Nexis, Butterworths, India.

8. B.S.Nabar, Forensic Science in Crime Investigation, 3rd Ed. 2010-11, Asia Law House, Hyderabad.

9. R. S. Verma and Thockchom IBS, Commentary on Rape, Kidnapping and Abduction, 1st Ed. 1999, Verma Publication, Delhi.

10. Law Commission of India 172nd Report - Review of Rape Law Government of India, 2000, para 3.1.2

11. The Malimath Committee Report on Reforms of Criminal Justice System 2003

12. An article by Dr. Jyotirmony Adhikary, Legislation on DNA Evidence – A proposal 2008 2 SCC J 24

13. An article by K. Kumar, The Expert and the Law Court, 1987 4 SCC J 7

14. An article by Nidhi Tondon, The Journey from One Cell to Another, Role of DNA Evidence

15. Janice Du Mont and Deborah White, The uses and impacts of medico-legal evidence in sexual assault cases : A global review, publication 2007, World Health Organization, Sexual Violence Research Initiative, printed in Switzerland.

16. Online Databases –

    Manupatra
    Westlaw

SCC Online

17. http://www.manupatra.co.in/nxy/gatawaxd/II SC 2007

18. http://www.atc.gov.au/publications/proceedings/02/Philips.pdf